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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/710,636

07/26/2004

Serena Giori

4635

7590

01/03/2007

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EXAMINER

BRUENJES, CHRISTOPHER P

ART UNIT

PAPER NUMBER

1772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/03/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/710,636

Applicant(s)

GIORI ET AL.

Examiner

Christopher P. Bruenjes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

WITHDRAWN REJECTIONS

1. The 35 U.S.C. 102 rejections of claims 1-4 as anticipated by Van Andel of record in the Office Action mailed July 13, 2006, Pages 2-3 Paragraph 2, have been withdrawn due to Applicant's amendments in the Paper filed October 11, 2006.
2. The 35 U.S.C. 103 rejections of claims 1-4 over Nomi in view of Steenblock of record in the Office Action mailed July 13, 2006, Pages 4-6 Paragraph 5, have been withdrawn due to Applicant's amendments in the Paper filed October 11, 2006.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for

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establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nomi (USPN 4,368,766) in view of von Fragstein et al (USPN 6,261,678).

Nomi teaches a portable container for potable water or water-based beverages (col.1, 1.5-8). The wall of said container comprises a water repellant water vapor permeable polymeric material such as microporous polytetrafluoroethylene, which has the ability to transmit water vapor by a solution/diffusion mechanism, whereby water vaporization inside said container produces a cooling effect capable of maintaining the temperature of said beverage below ambient when relative humidity is below 100% (col.1, 1.9-32 and col.1, 1.63 - col.2, 1.5). A porous fabric is laminated to the outer surface and/or inner surface of said membrane (col.3, 1.1-6).

Nomi fails to teach using a non-porous membrane as the polymeric material that has the ability to transmit water vapor by a solution/diffusion mechanism. However, von Fragstein et al

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teach that water vapor permeable waterproof films are specifically required to resist contaminants. Von Fragstein et al specifically teach non-porous films made of polyetherester copolymers (col.5, 1.37-55). Von Fragstein et al teach that copolyetheresters are water vapor permeable and transports individual water molecules across its molecular structure, but bulk transport of liquids and gases is inhibited (col.5, 1.37-55). Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to substitute a non-porous membrane comprising copolyetheresters, which includes hydrophilic units, for a microporous polytetrafluoroethylene because it has improved resistance to contaminants while still providing water vapor permeability, as taught by von Fragstein et al. Nomi and von Fragstein et al are analogous insofar as both references are reasonably pertinent to the particular problem with which the inventor was concerned, which is forming water vapor permeable waterproof films for forming articles.

Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to substitute the water vapor permeable waterproof non-porous membrane comprising copolyetherester, which includes hydrophilic units of ether, of von Fragstein et al for the water vapor

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permeable waterproof porous membrane of Nomi in order to provide the portable water container of Nomi with a membrane that has improved resistance to contaminants, as taught by von Fragstein et al, which would be known to one having ordinary skill in the art to be critical to protecting the potable water.

6. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nomi (USPN 4,368,766) in view of Nowakowski (USPN 4,368,766).

Nomi teaches a portable container for potable water or water-based beverages (col.1, 1.5-8). The wall of said container comprises a water repellant water vapor permeable polymeric material such as microporous polytetrafluoroethylene, which has the ability to transmit water vapor by a solution/diffusion mechanism, whereby water vaporization inside said container produces a cooling effect capable of maintaining the temperature of said beverage below ambient when relative humidity is below 100% (col.1, 1.9-32 and col.1, 1.63 - col.2, 1.5). A porous fabric is laminated to the outer surface and/or inner surface of said membrane (col.3, 1.1-6).

Nomi fails to teach using a non-porous membrane as the polymeric material that has the ability to transmit water vapor by a solution/diffusion mechanism. However, Nowakowski teaches

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that water vapor permeable waterproof films are specifically required to be substantially non-porous to prevent bacteria from passing through the membrane. Although Nowakowski is concerned with preventing bacteria from reaching a wound, nonetheless, it would be obvious to one having ordinary skill in the art that bacteria would also be required to be prevented from passing through a membrane containing drinking water. Nowakowski specifically teaches non-porous films that allow water vapor to pass through the membrane without having pores (col.2, 1.43-58). Nowakowski teaches that polyether-based segmented polyurethane are employed are water vapor permeable and prevents invasion of bacteria (col.3, 1.31-44). Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to substitute a non-porous membrane comprising polyether-urethanes, which includes hydrophilic units, for a microporous polytetrafluoroethylene because it has improved resistance to invasion of bacteria while still providing water vapor permeability, as taught by Nowakowski. Nomi and Nowakowski are analogous insofar as both references are reasonably pertinent to the particular problem with which the inventor was concerned, which is forming water vapor permeable waterproof films for forming articles.

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Thus, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to substitute the water vapor permeable waterproof non-porous membrane comprising the polyether-urethane, which includes hydrophilic units of ether, of Nowakowski for the water vapor permeable waterproof porous membrane of Nomi in order to provide the portable water container of Nomi with a membrane that has improved resistance to the invasion of bacteria, as taught by Nowakowski, which would be known to one having ordinary skill in the art to be critical to protecting the potable water.

Response to Arguments

7. Applicant's arguments with respect to claims 1-4 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P. Bruenjes whose telephone number is 571-272-1489. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

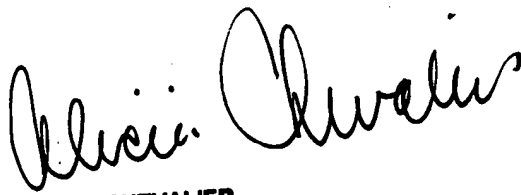
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christopher P Bruenjes
Examiner
Art Unit 1772

CPB
CPB
December 22, 2006


ALICIA CHEVALIER
PRIMARY EXAMINER